

NTSB Order No. EA-4441

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 3rd day of April, 1996

Docket SE-14149

judge reduced the Administrator's 120-day proposed suspension of respondent's airline transport pilot (ATP) certificate to a suspension of 80 days. The Administrator has not appealed that sanction reduction. We deny respondent's appeal.

Respondent has admitted that he was the pilot-in-command (PIC) of a Beech Baron being used in a Part 135 air taxi, passenger-carrying flight from Boulder, CO, on January 31, 1995.

With respondent in the cockpit was Mr. Martin Boniek, who was the lessee of the aircraft and the owner of the air taxi operation. Mr. Boniek was not listed on the 135 certificate to fly the aircraft because he was not Part 135-qualified (Tr. at 39-40),³ and respondent has testified that Mr. Boniek was not a crewmember on the flight. Tr. at 140.

Prior to the initiation of the flight, both gentlemen performed various tasks, respondent tending to the aircraft, and Mr. Boniek accommodating the arriving passengers. Critical to this case is their removal of the aircraft from the hanger, with a towbar attached. Respondent testified that he affixed the towbar to the aircraft. Tr. at 105. The towbar, which was painted yellow and approximately 6 feet long, was not removed

(..continued)

civil aircraft unless it is in an airworthy condition."

Section 91.13(a) reads:

Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³Mr. Boniek also testified that, although he had qualified to fly the Beech Baron in Part 91 service, he was not current in the aircraft.

before takeoff. As a result, the aircraft was operated in an unairworthy condition, a point respondent admits in his appeal (at 4). Respondent was forced to land the aircraft shortly after takeoff. On landing, the nosewheel collapsed, with "observable damage to the aircraft." Respondent's Appeal at 4.

In affirming the Administrator's charges, the law judge rejected the respondent's affirmative defense that he was not responsible for the aircraft's unairworthy condition and that he did not operate the aircraft carelessly or recklessly.⁴ Respondent reiterates these arguments on appeal. It is his position that it was Mr. Boniek's responsibility to ensure removal of the towbar before takeoff, that respondent could rely on Mr. Boniek doing so and, conversely, that respondent is not responsible for Mr. Boniek's failure to do so. However, the cases respondent cites do not support this position, nor does his brief accurately reflect our precedent.

To the facts of this case, the law judge applied the principles in Administrator v. Fay and Takacs, NTSB Order No. EA-3501 (1992), which reviews and summarizes Board precedent on the subject of reasonable reliance. Fay and Takacs states:

As a general rule, the pilot-in-command is responsible for the overall safe operation of the aircraft. If, however, a particular task is the responsibility of another, if the PIC has no independent obligation (e.g., based on operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no

⁴The law judge only found that respondent had acted carelessly.

violation be found.

Id. at 9.

Respondent has failed to establish the conditions precedent to a finding that he reasonably relied on Mr. Boniek's removing the towbar. First, respondent has not established (nor would the facts appear to permit a finding) that Mr. Boniek was responsible for removing the towbar. Mr. Boniek was not a crewmember (in flight or on the ground), nor has respondent offered any evidence in the form of manuals, for example, to establish that Mr. Boniek was responsible for removing the towbar.

The two men helped each other move the aircraft from the hanger. Respondent's testimony that, on a number of occasions in the past, Mr. Boniek had removed the towbar and that it was an established arrangement conflicts with testimony from Mr. Boniek that he and respondent had never done this before.⁵

Second, respondent had an independent obligation and ability to determine if the towbar had been removed. Respondent, as pilot-in-command, had the ultimate responsibility to ensure the aircraft's airworthiness. Had he made a preflight walk around the front of the aircraft after it was moved, he could have seen and should have seen the towbar. He had a number of opportunities to do so after the aircraft was moved outside. Respondent has not satisfied the conditions Fay and Takacs requires for a finding of reasonable reliance. Moreover,

⁵Respondent had only worked for Mr. Boniek for approximately 3 months.

respondent's actions do not rise to the highest level of care expected from holders of airline transport pilot certificates.

The cases respondent cites do not prove otherwise. In Administrator v. Watson, 6 NTSB 1034 (1989), the pilot-in-command, in contrast to respondent, did all he reasonably could have done in performing a full check, i.e., he saw and assisted in luggage being loaded, and saw the cargo door closed. We found he had no reason to believe that more luggage would be loaded **contrary to his explicit directions**, or that the door would not be closed properly. That is considerably different from this case, where respondent did the preflight in the hanger, but knew the condition of the aircraft had changed with the addition of the towbar and, further, neither removed it himself nor asked Mr. Boniek if the latter had done so. Tr. at 48.⁶

Respondent's excerpt from Administrator v. Nutsch, NTSB Order No. EA-4148 (1994), is a citation from Fay and Takacs, supra, reproduced above. Contrary to respondent's assertion, it is our view that respondent in this case had an independent obligation to assure removal of the towbar, rather than simply assuming that someone else would do so. Further, the facts of Administrator v. Coleman, 1 NTSB 229 (1968), and Administrator v. Thomas, 3 NTSB 349 (1977), two cases where we found reasonable

⁶And, contrary to respondent's argument, we did not hold in Watson that the pilot was excused because he should not have to check twice. In fact, we noted that accepting such a rationale was problematic when it had not been argued by the parties. Id. at 1036.

reliance, differ substantially from the facts before us.⁷

Respondent also argues that the 80-day suspension of his certificate is too long. The Administrator's reply demonstrates, however, that 80 days is within the range we have affirmed for similar (and lesser) incidents. We also agree with the Administrator that the 80-day suspension is not inappropriate in the case of a passenger-carrying flight operated by a holder of an ATP.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 80-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.⁸

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁷Respondent is incorrect in arguing that, to be reasonable and exculpatory, reliance must be on a crewmember. See Administrator v. Dickman and Corrons, 3 NTSB 2252 (1980).

⁸For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR section 61.19(f).